

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:	)	
	)	
J. H. Baxter & Co., a California	)	AGREED ORDER
Limited Partnership	)	
1700 South El Camino Real	)	
P. O. Box 5902	)	No. DE _____
San Mateo, CA 94402-0902	)	

TO: J. H. Baxter & Co.  
Ms. Georgia Baxter  
Executive Vice President  
1700 South El Camino Real  
P. O. Box 5902  
San Mateo, CA 94402-0902

I.

Jurisdiction

This Agreed Order ("Order") is issued pursuant to the authority of RCW 70.105D.050(I).

II.

Findings of Fact

Ecology makes the following Findings of Fact, without admission of such facts by J. H. Baxter & Co.

1. J. H. Baxter & Co. is a privately owned company which produces telephone and power poles using a pressure treating process with roughly 5% pentachlorophenol in a base oil carrier at their facility located at 6520 - 188th Street NE in Arlington, Snohomish County, Washington. This facility encompasses approximately 52 acres, 17 of which are used for pole treatment operations, 28 for untreated pole storage and pole peeling, and 7 acres of a closed landfill containing untreated wood waste.
2. J. H. Baxter & Company has owned and operated the wood treating facility in Arlington since 1971. The site was previously operated as a pole treatment plant. The plant was built by Ted Butcher, Inc. in the 1960's and operated until 1970. Prior to that time, the land was used for agriculture.

3. Pentachlorophenol spills at the Baxter-Arlington site occurred in 1981, 1989, and 1990. The reported volumes of pentachlorophenol spilled were 1,400, 200, and 2,000, gallons for those years, respectively.
4. J. H. Baxter & Co. submitted a Dioxin and Furan Study on April 6, 1998 as required by their NPDES permit. Eight separate stormwater samples from two storm events and two samples of the pentachlorophenol treating solution were analyzed for the study. High levels of dioxins and furans were found in each sample. The stormwater also contains very high levels of pentachlorophenol. The detected concentrations of pentachlorophenol in stormwater ranges from 26 to 13,568 ppb (in term of toxic equivalency).
5. Ground water at the site appears to have been impacted by historic wood preserving practices and spills at the site. The concentration of pentachlorophenol in ground water monitoring wells range from 1 to 480 ppb.
6. Storm water from the site infiltrates into the ground via french drains and direct infiltration. Soils beneath the site may contain elevated levels of the chemicals of concern, although the horizontal and vertical extent of impacted soils is not known.
7. The ground water tested at a monitoring well located in the northwest corner of the facility has had pentachlorophenol concentrations ranging from 70 to 150 ppb. A domestic drinking water well of the adjoining Airway Mobile Home Park was decommissioned by J. H. Baxter in 1992. J. H. Baxter did this in good faith so any potential contamination that exists in the ground water would not be pulled off-site by continued use of the well.
8. It is not known whether or not any contaminated ground water has migrated beyond the boundaries of the J. H. Baxter & Co. facility in Arlington.

### III.

#### Ecology Determinations

1. The J. H. Baxter & Co. is an owner or operator as defined at RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4). The J. H. Baxter & Co. also owned, possessed or generated hazardous wastes disposed of at a "facility" as provided in RCW 70.105d.040(1)(c).

2. The facility is known as J. H. Baxter Wood Preserving and is located at 6520 - 188th Street NE in Arlington, Washington 98223.
3. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(7).
4. Based on the presence of these hazardous substances at the facility and all factors known to the Department, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(20).
5. By a letter of December 14, 1998, J. H. Baxter & Co. voluntarily waived its rights to notice and comment and accepted Ecology's determination that J. H. Baxter & Co. is a "potentially liable person" under RCW 70.105D.040.
6. Pursuant to RCW 70.105D.030(1) and 70.105D.050, the Department may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.
7. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.

#### IV.

##### Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that J. H. Baxter & Co. take the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

1. Implement a Remedial Investigation and Feasibility Study (RI/FS) to investigate the nature and extent of soil and ground water contamination at the Baxter Arlington site and identify remedial alternatives.

2. The scope of work and schedule are specified in Attachment (1). Baxter agrees to compress the time frames in the schedule where possible.
3. As described in Attachment (1) the work to be performed for this order is MTCA Action Items:
  - (1) Work Plan
  - (2) Field investigations
  - (3) Interim report
  - (4) Supplemental field investigation
  - (5) RI/FS report
  - (6) Cleanup action plan

## V.

### Terms and Conditions of Order

#### 1. Definitions

Unless otherwise specified, the definitions set forth in ch. 70.105D RCW and ch. 173-340 WAC shall control the meanings of the terms used in this Order.

#### 2. Public Notices

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

#### 3. Remedial Action Costs

J. H. Baxter & Co. shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). J. H. Baxter & Co. shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of

work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges.

4. Designated Project Coordinators

The project coordinators for Ecology are:

Name: Ching-Pi Wang for implementation of MTCA action and this agreed order and  
Jeanne Tran for implementation of the water quality permit for the site.

Address: Washington Department of Ecology  
3190 - 160th Avenue SE  
Bellevue, WA 98004

Telephone and email: Ching-Pi Wang: (425) 649-7134; cwan461@ecy.wa.gov  
Jean Tran: (425) 649-7078; jtra461@ecy.wa.gov

The project coordinator for J. H. Baxter & Co. is:

Name: Georgia B. Baxter

Address: P. O. Box 5902, 1700 South El Camino Real, San Mateo, CA 94402

Telephone and email: (650) 349-0201; gbaxter@jhbaxter.com

The project coordinators shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and the J. H. Baxter & Co., and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinators. Should Ecology or J. H. Baxter & Co. change project coordinators, written notification shall be provided to Ecology or J. H. Baxter & Co. at least ten (10) calendar days prior to the change.

5. Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. The J. H. Baxter & Co. shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in

advance of their involvement at the Site. J. H. Baxter & Co. shall provide a copy of this Order to all agents, contractors and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Order.

Except where necessary to abate an emergency situation, J. H. Baxter & Co. shall not perform any remedial actions at the J. H. Baxter facility in Arlington outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

WAC 173-340-400(7)(b)(i) requires that "construction" performed on the Site must be under the supervision of a professional engineer registered in Washington.

6. Access

Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by J. H. Baxter & Co. By signing this Agreed Order, J. H. Baxter & Co. agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall allow split or replicate samples to be taken by J. H. Baxter & Co. during an inspection. J. H. Baxter & Co. shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

7. Public Participation

J. H. Baxter & Co. shall prepare and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the site. J. H. Baxter & Co. shall help coordinate and implement public participation for the site.

8. Retention of Records

J. H. Baxter & Co. shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of J. H. Baxter & Co., then J. H. Baxter & Co. agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution

J. H. Baxter & Co. may request Ecology to resolve disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory, or his/her successor(s), to this Order. Ecology resolution of the dispute shall be binding and final. J. H. Baxter & Co. is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights/No Settlement

This Agreed Order is not a settlement under ch. 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against J. H. Baxter & Co. to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against J. H. Baxter & Co. to require those remedial actions required by this Agreed Order, provided J. H. Baxter & Co. complies with this Agreed Order.

Ecology reserves the right, however, to require additional remedial actions at the Site should it deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from J. H. Baxter facility in Arlington.

In the event Ecology determines that conditions at the Site are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order J. H. Baxter & Co. to stop further implementation of this Order for such period of time as needed to abate the danger.

11. Transference of Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by J. H. Baxter & Co. without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to any voluntary or involuntary transfer of any legal or equitable interest, J. H. Baxter & Co. may have in the site or any portions thereof, J. H. Baxter & Co. shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, J. H. Baxter & Co. shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws

- A. All actions carried out by J. H. Baxter & Co. pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph B of this section.
- B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order that are known to be applicable at the time of issuance of the Order have been included in Section IV, the Work to be Performed and Attachment (1) are binding and enforceable requirements of the Order.

J. H. Baxter & Co. has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event J. H. Baxter & Co. determines that



additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or J. H. Baxter & Co. shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, J. H. Baxter & Co. shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by J. H. Baxter & Co. and on how J. H. Baxter & Co. must meet those requirements. Ecology shall inform J. H. Baxter & Co. in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. J. H. Baxter & Co. shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

- C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply and J. H. Baxter & Co. shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

## VI.

### Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon J. H. Baxter & Co.'s receipt of written notification from Ecology that J. H. Baxter & Co. has completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Agreed Order have been complied with.

## VII.

### Enforcement

1. Pursuant to RCW 70.105D.060, this Order may be enforced as follows:
  - A. The Attorney General may bring an action to enforce this Order in a state or federal court.
  - B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
  - C. In the event J. H. Baxter & Co. refuses, without sufficient cause, to comply with any term of this Order, J. H. Baxter & Co. will be liable for:
    - (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
    - (2) civil penalties of up to \$25,000 per day for each day it refuses to comply.
  - D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under Section 6 of ch. 70.105D RCW.

Effective date of this Order: June\_\_\_\_\_, 1999

J.H. BAXTER & Co.

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

By \_\_\_\_\_  
Georgia B. Baxter  
Executive Vice President

By \_\_\_\_\_  
Steve Alexander, Section Head  
Northwest Regional Office  
Toxics Cleanup Program

## **WORK TO BE PERFORMED**

### **RI/FS Task 1: Work Plan**

A streamlined work plan will be prepared for a focused Remedial Investigation/Feasibility Study (RI/FS). Existing data will be analyzed to develop a conceptual model for the occurrence of PCP in the groundwater system and the potential for dioxin to occur. Surface soils in the pole treating and treated pole storage areas may be a contributor to the observed groundwater contamination and paving will be considered a presumptive remedy for addressing this concern. It is also possible that past spills or other releases have occurred which may contribute to groundwater quality impacts via subsurface pathways. The work plan will focus on investigation of the subsurface soil quality to identify these other potential contributors so that the effectiveness of paving as a remedial alternative can be evaluated along with other subsurface source remedial technologies.

The work plan will begin with a comprehensive analysis of the existing data, particularly historic use information and existing groundwater data. These analyses will be used to focus subsurface investigation in areas where historic practices suggest potential for contaminant releases. The existing groundwater data will be used to define the range in anticipated groundwater flow conditions within and away from areas of known groundwater contamination, and assist in assessing off-site groundwater migration. The work plan will be reviewed and approved by Ecology.

### **RI/FS Task 2: Field Investigation**

Site characterization activities will be focused within the treatment area and on assessment of the groundwater plume. The work plan will form the basis for the field investigation.

### **RI/FS Task 3: Interim Report**

The field investigation data will be compiled and evaluated. At this time, it is possible that a need for supplemental data will be identified, particularly for a better evaluation of potential remedial alternatives. Recommendations for any additional investigation will be made in a brief interim report describing the proposed investigation and rationale for the additional data collection. This additional work will be reviewed and approved by Ecology.

### **RI/FS Task 4: Supplemental Field Investigation**

Additional investigations will be conducted if necessary to address data gaps. The potential scope of such investigations can not be defined at this time but will likely be focused on remedial alternative analysis.

### **RI/FS Task 5: RI/FS Report**

Preparation of the focused RI/FS report will get underway once the supplemental field investigations (if necessary) are completed. The RI/FS will discuss the nature and extent of contamination at the site as well as appropriate remedial options.

### **RI/FS Task 6: Cleanup Action Plan (CAP)**

Preparation of a CAP would begin following Ecology approval of the RI/FS. If remedial actions are required, the design work could be completed during this period so that it is coordinated with the stormwater improvements.

## **SCHEDULE**

The schedule for the conduct of these tasks is attached hereto and incorporated by this reference.